

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ELDORA PRINCE and NGCOBA ATKINS,

Plaintiffs,

-v-

6:16-CV-440
(DNH/ATB)

DEPARTMENT OF SOCIAL SERVICES OF
ONEIDA COUNTY; and LUCILLE SOLDADO,
Commissioner,

Defendants.

APPEARANCES:

ELDORA PRINCE
NGCOBA ATKINS
Plaintiffs pro se
636 James Street
Utica, NY 13501

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiffs Eldora Prince and Ngcoba Atkins brought this action pursuant to 42 U.S.C. § 1983, the Americans with Disabilities Act, and the Rehabilitation Act.

On September 15, 2017, the undersigned adopted in full the August 31, 2016 Report-Recommendation of Honorable Andrew T. Baxter, United States Magistrate Judge. ECF No. 15. The September 15, 2017 Decision and Order dismissed plaintiffs' due process claims without prejudice and dismissed the remainder of the amended complaint with prejudice. Plaintiffs were advised they would have forty-five (45) days from the date of the Decision and Order in which to file a new, proposed second amended complaint curing the

identified deficiencies.

The Decision and Order noted that plaintiffs had in fact already filed an "amended complaint" at ECF No. 12, after the issuance of the Report-Recommendation, but before adoption of same. The amended complaint at ECF No. 12 had thus not yet been considered or accepted. That amended complaint was referred back to Magistrate Judge Baxter for consideration, but upon further initial review by the undersigned, it is clear that the amended complaint at ECF No. 12 is identical to the amended complaint at ECF No. 9, which is the subject of Magistrate Judge Baxter's Report-Recommendation dated August 31, 2016. Therefore, there is no need for further review of the amended complaint at ECF No. 12.

However, as the forty-five (45) day period from the September 15, 2017, Decision and Order has just begun to run, plaintiffs may still file a proposed, second amended complaint curing the deficiencies in their due process claims only. Accordingly, should plaintiffs file a **new**, proposed second amended complaint within the referenced time frame, the file will be returned to Magistrate Judge Baxter for further review.

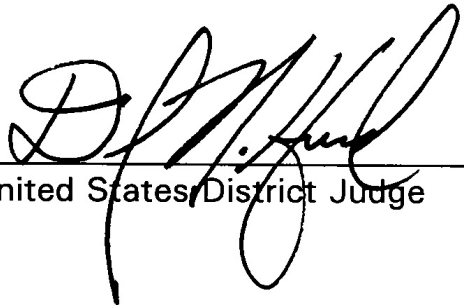
Therefore, it is

ORDERED that

1. The referral of the amended complaint, ECF No. 12, to Magistrate Judge Baxter is terminated;
2. Plaintiffs are permitted forty-five (45) days in which to file a new, proposed second amended complaint only as to their due process claims;
3. If plaintiffs choose to file such by the deadline of October 30, 2017, the pleading will be referred to Magistrate Judge Baxter for further review; and

4. If plaintiffs fail to file a new, proposed second amended complaint by that deadline, the amended complaint will be dismissed in its entirety, without further order.

IT IS SO ORDERED.



United States District Judge

Dated: September 21, 2017
Utica, New York.